
Rules of Office of Administration

Division 10—Commissioner of Administration

Chapter 17—Office of Equal Opportunity

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Title 1—OFFICE OF ADMINISTRATION

Division 10—Commissioner of Administration

Chapter 17—Office of Equal Opportunity

1 CSR 10-17.040 Minority/Women Business Enterprise Certification

PURPOSE: This rule establishes a program by which Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) may be certified by the Office of Equal Opportunity (OEO).

(1) The following standards shall be used by the Office of Equal Opportunity (OEO) in determining whether an individual, business, or organization is eligible to be certified as a Minority Business Enterprise/Women Business Enterprise (MBE/WBE). The list is not meant to be all inclusive but shall serve as a guideline for certification of MBE/WBEs.

(A) At least fifty-one percent (51%) of the enterprise's ownership and control shall be held by minorities or women.

(B) All securities which constitute ownership and/or control of the enterprise for purposes of establishing it as an MBE/WBE under these regulations shall be held directly by a minority or woman.

(C) Securities held in trust, or by a guardian for a minor, shall not be considered as held by a minority or woman in determining the ownership or control of a corporation.

(D) Ownership and control of the enterprise by the minorities/women shall be real, substantial, and continuing. The minorities/women shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with ownership interests.

(E) The minority or woman owner(s) shall possess the power to make day-to-day as well as major decisions on matters of management, policy and operation. There shall be no restrictions which limit the customary discretion of the minority or woman owner(s).

(F) The contribution of capital or expertise by the minorities or women shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, participation as an employee rather than a manager, etc.

(2) Any individual, business, or organization desiring certification as an MBE or WBE shall submit an MBE/WBE Certification Application and required documentation to the OEO.

(A) An MBE/WBE applicant whose principal place of business is located in a state

other than Missouri must provide proof of certification by that state, if such certification is available.

(B) MBE/WBE applicants which have been certified by an organization which maintains a certification memorandum of understanding with the Office of Administration may be certified by the OEO based upon their previous certification. In such case, the MBE/WBE must provide proof of certification.

(C) Certification by another state or organization does not guarantee certification by the OEO.

(D) All applications shall be reviewed by the OEO and approved or denied.

1. The OEO may conduct an on-site review at the applicant's place of business to verify status as a certifiable MBE/WBE. The state is not required to conduct on-site reviews if such review would require that the OEO incur unreasonable expenses to verify eligibility for certification. An example of an unreasonable expense would be travel outside the state of Missouri for an on-site review.

2. The OEO may require the applicant to submit documentation deemed necessary to determine eligibility for certification as an MBE/WBE. Examples of required documentation may include: proof of minority or female status, initial capital contribution information, income tax returns, partnership agreement, articles of incorporation, proof of ownership, etc.

(E) If an applicant is approved, a letter of approval and certification shall be mailed to the certified MBE/WBE.

(F) If an applicant is denied certification, it will be notified in writing. The notification will include reason(s) for the denial. Reasons for certification denial may include but are not limited to the following: improperly filed application, requested information not provided, failure to meet certification standards, inability to complete certification review.

(3) After certification, the MBE/WBE must notify the OEO of any changes of fact set forth in the application including, but not limited to: company ownership, officers, address, organizational structure, etc.

(4) All certifications, except joint ventures, shall be effective for a period not to exceed two (2) years.

(A) MBE/WBEs may request recertification by submitting a recertification application prior to the expiration date of their current certification.

(B) If an application for recertification is not submitted prior to the expiration date of the current certification, the business will be

removed from the active certified list of vendors. In order to become recertified after the expiration date of the original certification, the applicant must submit the recertification application with an explanation of the delay.

(5) The OEO may revoke certification of an MBE/WBE. The following list shall serve as a guideline for revocation determinations (it is not intended to be all inclusive):

(A) Change in the organization or ownership structure of the business entity;

(B) Revocation of certification by another certifying entity; or

(C) Falsification of information on applications, bids, etc.

(6) Any certified MBE/WBE desiring certification of a joint venture shall submit an application and required documentation to the OEO.

(A) In order to qualify for joint venture certification the MBE/WBE partner must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risk, and profits of the joint venture.

(B) The OEO may require the applicant to submit documentation deemed necessary to determine eligibility for certification as a joint venture. Examples of required documentation may include: copy of the joint venture agreement and copy of certification issued to MBE/WBE participant.

(C) Joint venture certification shall be effective for a period not to exceed one (1) year.

(D) Any changes proposed in the joint venture agreement must be filed with and approved by the OEO prior to the implementation of the changes in order to maintain certification.

(7) The applicant may appeal certification denial or revocation actions by requesting that the determination be reviewed by the commissioner of administration or designee.

(A) Any request for review must be in writing and filed with the commissioner within twenty-one (21) calendar days after the date of receipt of the notice of denial or revocation. The request must set forth specific reasons why denial or revocation should be reversed.

(B) The commissioner's determination shall be final and shall be mailed to all parties involved.

(8) Third parties who have reason to believe that an enterprise has been wrongly denied or granted certification as an MBE/WBE or joint venture may file a third party challenge

with the OEO. Challenges by third parties are not considered an appeal.

(A) The third party challenge must be submitted in writing along with supporting documentation in sufficient detail to support the allegations. The OEO may require additional documentation from the challenger.

(B) The third party challenge must contain the name, address, telephone number and signature of the challenger.

(C) Third party challenges will not be considered confidential.

(D) The MBE/WBE will be notified in writing that a challenge has been received by the OEO.

(E) The OEO will investigate the challenge and issue a written decision.

AUTHORITY: section 37.023, RSMo Supp. 1999.* This rule originally filed as 1 CSR 40-1.080. Original rule filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000

*Original authority: 37.023, RSMo 1995.

1 CSR 10-17.050 Minority/Women Business Enterprise Participation in Procurement Process

PURPOSE: This rule establishes a program to encourage and facilitate the growth and development of Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) by assuring that they have the maximum opportunity to participate in procurements financed in whole or in part with state funds.

(1) The Office of Equal Opportunity (OEO) will provide assistance to Minority Business Enterprises/Women Business Enterprises (MBE/WBEs). Services provided may include but are not necessarily limited to: workshops, bid history and pricing abstracts, minority vendor registration, exposure to state agency's procurement staff and contracting opportunities, MBE/WBE directory and newsletter to promote increased participation.

(2) The OEO will encourage participation in the procurement process and fairness in consideration of bids/proposals submitted by MBE/WBEs. Programs/procedures designed by the OEO to accomplish these objectives may include: providing diversity training for state procurement personnel, identifying minority and women personnel to serve on evaluation committees, closely reviewing the requirements for bonding, notification of procurement opportunities, etc.

(3) The OEO will compile, maintain and make available a directory of MBE/WBEs. The directory shall be available, upon request, to all bidders and contractors. The directory shall specify the name of the MBE/WBE, the commodities or services it provides, its address, phone number and contact person.

(4) The OEO will establish MBE/WBE participation goals and programs in accordance with section 37.020, RSMo, any successor or similar statutes, or executive order based upon a study to determine the availability of qualified MBE/WBEs and any other pertinent information. MBE/WBE participation goals and programs shall be reviewed periodically to ascertain the need for continuance or revision of existing programs or the implementation of new programs.

(5) The OEO may recommend MBE/WBE subcontracting goals. The OEO may recommend those types of solicitations in which MBE/WBE subcontracting requirements may be appropriate.

(6) The following expenditures may be counted toward meeting established MBE/WBE goals:

(A) The total dollar value of a contract awarded to an MBE/WBE;

(B) The total dollars paid by a prime contractor to an MBE/WBE for supplies and materials provided to the state in fulfillment of the contract;

(C) The total dollar value of work subcontracted to an MBE/WBE by a prime contractor;

(D) That portion of the total dollar value subcontracted to a certified joint venture by a prime-contractor equal to the percentage of the ownership and control of the MBE/WBE partner in the joint venture; and

(E) Only expenditures to MBE/WBEs that perform a commercially useful function related to the delivery of the supplies required by the contract.

(7) After the contract is established, the OEO may monitor the activity of the contractor to assure compliance with the MBE/WBE utilization stipulated in their contract.

(8) Contractors that fail to comply with the MBE/WBE utilization stipulated in their contract, may be considered to be in breach of contract and may be subject to such remedies as stipulated in the contract.

(9) The OEO shall maintain statistics and issue periodic reports about MBE/WBE participation.

AUTHORITY: sections 34.050, RSMo Supp. 1999 and 37.020, RSMo 1994.* This rule originally filed as 1 CSR 40-1.070. Original rule filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000.

*Original authority: 34.050, RSMo 1939, amended 1945, 1973, 1995; and 37.020, RSMo 1990.